IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9401 OF 2005.

Mahabaleshwar Madhotpadak
Sahakari Society Ltd. ... Petitioner.

V/s.

Sou. Hira V. Dhebe & others. ... Respondents.

S.S.Pakale for the petitioner.

M.S.Toplar for respondent No.1.

CORAM: V.C.DAGA, J.

DATED: 21st April 2006.

P.C.:

. Heard learned counsel for the petitioner.

. Perused petition.

2. This petition is directed against the order dated 3rd December, 2005 passed by the Industrial Court, Satara in Revision (ULP) No.43 of 2005 dismissing the revision and thereby confirming the interim order passed by the Labour Court, Satara dated 11th October, 2005 below Exh.2 in Complaint (ULP) No.3 of 2005, whereby the petitioner herein is directed to allow respondent No.1- workman to work in their society temporarily till the final disposal of the complaint.

3. Both the Courts below have found that

there is non compliance of section 25F of the Industrial Disputes Act, 1947 ("I.D.Act" for short).

4. Mr.Pakale, learned counsel for the petitioners relied upon the judgment of the learned single Judge of this Court **Managing Director, Bombay Film Laboratory Ltd. v. Vasule L.G.**, 1998 (I) LLJ 208 and the judgment of the Punjab & Haryana High Court **Punjab State Electricity Board v. Presiding Officer, Labour Court, Bhatinda**, 1997 (Sup) LLJ 0559 (P & H) to contend that even in a case of short fall in payment of retrenchment compensation under section 25F of the Industrial Disputes Act, 1947, the retrenchment cannot be invalidated, if the employer deposits the amount of short payment as soon as short payment of retrenchment compensation is brought to his notice. He, thus, submits that the impugned order suffers from an erroneous approach on the part of the Court below as such the petition deserves to be entertained and the impugned order is liable to set aside.

5. Per contra, Mr.Topkar, learned counsel appearing for respondent No.1 while opposing the submissions made by Mr.Pakale submits that in the

case of **Managing Director, Bombay Film Laboratory Ltd.** (Supra) the payment was immediately made by the employer without waiting for determination of short fall by the Court. He, thus, submits that the said judgment rests on its own facts.

6. Mr.Topkar further submits that if the factual aspects are compared with the case in hand, it would be clear that the facts of both the cases relied upon by Mr.Pakale and the case in hand are altogether different. In the case at hand, in spite of taking objection by the employee, no efforts were made by the employer to quantify the amount and make the short fall good. He, thus, tried to distinguish the case cited by Mr.Pakale on facts.

7. Mr.Topkar also placed reliance on the judgment of the Apex Court in the case of **Krishna Bahadur v. Purna Theatre & Ors.**, 2004 III CLR 563; wherein the Apex Court while dealing with the provisions of section 25-F of the I.D.Act ruled that compliance of requirement of the provisions of section 25-F(b) is mandatory before the retrenchment of the workman is given effect to

and in the event of contravention thereof retrenchment must be treated as void *ab initio*.

8. Mr.Topkar also relied upon the recent judgment of the Division Bench of this Court in the case **DBH International Limited v. Their Workmen**, 2005 II CLR 679; wherein the Division Bench held that the retrenchment would be illegal on the ground of short payment of retrenchment compensation. It cannot be made good by tendering the amount of short fall.

9. Mr.Topkar, alternatively, submits that so far as the judgment of the learned single Judge in the case of **Managing Director, Bombay Film Laboratory Ltd.** (supra) is concerned that cannot be said to be a good law in view of the Division Bench judgment of this court in case of **DBH International Ltd.** (supra). He, thus, submits that the view taken by the Court below is a reasonable and possible view and, therefore, in exercise of writ jurisdiction this Court should not interfere with the impugned order, especially, when no perversity in the impugned order is demonstrated by the petitioner.

10. Having heard rival parties, it is not necessary to go through the niceties of the various cases cited, in view of the recent judgment of the Division Bench in the case of **DBH International Ltd.** (supra) relied upon by the learned counsel for respondent No.1, which is binding on me; the impugned order of the Court below can be well supported on the basis of the Division Bench judgment in the case of **DBH International Ltd.** (supra). In this view of the matter, the view taken by the Court below is a reasonable and possible view. No case is made out to interfere with the impugned order.

11. In the result, petition is dismissed in limine with no order as to costs.

7. At this stage, learned counsel for the petitioner prayed for stay of this order. Prayer made is rejected.

(V.C.DAGA, J.)